

No. 15882

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANNA VALETTA NOCITA, claimant of ONE 1957 FORD
THUNDERBIRD AUTOMOBILE, MOTOR No. D7FH116357,
its tools and appurtenances,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Jurisdiction.

The United States District Court had jurisdiction to render its judgment in the action entitled *United States of America v. One 1957 Ford Thunderbird Automobile*, Motor No. D7FH116357, its tools and appurtenances, Civil No. 590-57 HW, pursuant to the authority contained in Title 28, United States Code, Section 1355. There is no dispute that the libelled automobile and the appellant resided within the Central Division of the Southern District of California.

This Court has jurisdiction of this appeal from the Findings of Fact, Conclusions of Law and Final Judgment of the District Court [T. R. 23] in favor of appellee and against the appellant ordering the said 1957

Ford Thunderbird Automobile, Motor No. D7FH116357, its tools and appurtenances, condemned and forfeited to the United States of America. Under the provisions of Title 28, United States Code, Sections 1291 and 1294(1) said judgment and order was a final decision of the District Court.

Statutes Involved.

Title 26, United States Code, Section 4401(a)(b)(c).

“§4401. Imposition of tax

(a) Wagers.—There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.

(b) Amount of wager.—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax.—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Aug. 16, 1954, 9:45 a.m., E. D. T., c. 736, 68A Stat. 525.”

Title 26, United States Code, Section 4411.

“§4411. Imposition of tax

There shall be imposed a special tax of \$50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable. Aug. 16, 1954, 9:45 a.m., E. D. T., c. 736, 68A Stat. 527.”

Title 26, United States Code, Section 4412.

“§4412. Registration

(a) Requirement.—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Firm or company.—Where subsection (a) requires the name and place of residence of the several persons constituting the firm or company shall be registered.

(c) Supplemental information.—In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such

supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter. Aug. 16, 1954, 9:45 a.m., E. D. T., c. 736, 68 A Stat. 527.”

Title 26, United States Code, Section 7302.

“§7302. Property used in violation of internal revenue laws.

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws. Aug. 16, 1954, 9:45 a.m., E. D. T., c. 736, 68A Stat. 867.”

Statement of the Case.

This is an appeal from a decision of the District Court condemning and forfeiting One 1957 Ford Thunderbird Automobile, Motor No. D7FH116357, its tools and appurtenances, to the United States of America for its use by Roland Nocita in, and as an active aid to, his wager-

ing business in violation of the internal revenue laws concerning wagering; to-wit: Sections 4411 and 4412 of Title 26, United States Code.

Appellant is the claimant and registered owner of the subject Ford Thunderbird Automobile. She is also the wife of Roland Nocita. The evidence, as later discussed, will show that Roland Nocita used the vehicle with appellant's consent and permission in, and as an active aid to his wagering business, which business he was conducting prior to and up until November 24, 1956, so as to subject the car to forfeiture. During the times in question Mr. Nocita had not filed an application for a wagering permit nor had he ever paid his wagering occupational tax. Also, he had never registered with the official in charge of the internal revenue district as a person required to pay a special tax pursuant to Section 4412 of Title 26, United States Code. [T. R. 27.]

On or about November 24, 1956, duly authorized and acting investigators of the Intelligence Division, Internal Revenue Service, Treasury Department of the United States, seized the said 1957 Ford Thunderbird automobile in the City of Los Angeles, County of Los Angeles, State of California. Thereafter, the Government filed its Libel of Information [T. R. 3] wherein it alleged the illegal use of the vehicle by Mr. Nocita in his wagering activities which subjected the car to condemnation and forfeiture.

The appellant filed an Answer to the Government's Libel. After the conclusion of the Trial the District Court gave judgment in favor of the Government and ordered the condemnation and forfeiture, to the United States, of the 1957 Ford Thunderbird automobile, Motor No. D7FH116357, its tools and appurtenances.

Summary of Argument.

I.

THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDINGS THAT THE 1957 FORD THUNDERBIRD AUTOMOBILE, ITS TOOLS AND APPURTENANCES, WAS USED BY ROLAND NOCITA IN RECEIVING WAGERS AND AS AN ACTIVE AID TO AND FACILITATION OF HIS BOOKMAKING BUSINESS.

II.

THE JUDGMENT IS NOT CONTRARY TO LAW BECAUSE THE USE BY ROLAND NOCITA OF THE SEIZED AUTOMOBILE TO RECEIVE WAGERS AND TO AID AND FACILITATE HIS WAGERING BUSINESS, COMES WITHIN THE MEANING OF SECTION 7302 OF THE INTERNAL REVENUE CODE WHICH SUBJECTS AN AUTOMOBILE TO FORFEITURE WHEN IT IS . . . "INTENDED FOR USE IN VIOLATING . . . THE INTERNAL REVENUE LAWS. . . . OR WHICH HAS BEEN SO USED" . . .

ARGUMENT.

I.

The Evidence Supports the Trial Court's Findings That the 1957 Ford Thunderbird Automobile, Its Tools and Appurtenances, Was Used by Roland Nocita in Receiving Wagers and as an Active Aid to and Facilitation of His Bookmaking Business.

The evidence introduced at the trial of this case clearly showed that Roland Nocita was a gambler and a bookmaker. He engaged in his bookmaking activities without filing an application for a wagering permit and without paying the wagering occupational tax. These facts were admitted by Mr. Nocita and were introduced in evidence by way of stipulations between counsel. [T. R. 27.] It is also to be noted that in the course of the stipulations it is shown that Mr. Nocita was engaging in wagering transactions right up until November 24, 1956, the date on which the 1957 Ford Thunderbird was seized. [T. R. 27.]

“Mr. Jacobson: There is still the matter of the stipulation.

Mr. Campbell: Yes; I will enter into the stipulation that at the time involved, namely, the 24th day of November, 1956, that Roland Nocita had not to that date filed an application for a wagering permit, and had not paid the wagering occupational tax.

The Court: I don't suppose you will admit that your client was engaged in a wagering transaction at this particular time?

Mr. Campbell: On that date, no. Prior to that date there is no question.”

James P. Donley, a Special Agent with the United States Treasury Department, Intelligence Division, who

investigates wagering violations [T. R. 27, 28] testified that he first saw Roland Nocita on the evening of November 20, 1956, driving a 1957 Ford Thunderbird automobile; that the automobile was black with a white top and that it bore the paper license plate No. 0573243; that on November 20, 1956, he followed Mr. Nocita in the Thunderbird automobile to approximately the intersection of San Vicente and Lime Avenue in Compton, California, where the car stopped for a moment; that he next saw the Ford Thunderbird automobile on November 24, 1956, at approximately 6:00 o'clock in the evening parked in the 6800 block on South Central Avenue [T. R. 31]; at that time and place he saw Mr. Nocita being detained by officers, and he asked Mr. Nocita to give him the keys to the Thunderbird so that he could search it; that Mr. Nocita replied "I want to take care of my car" [T. R. 33], indicating the Thunderbird; that Mr. Nocita then called out to someone in the crowd across the street to turn the keys over and a man threw the keys over, which he, Mr. Donley, picked up and found to be the keys that fitted that Ford Thunderbird automobile; that at that time the license on the said Ford Thunderbird automobile with the black body and white top was a metal plate with the numbers and letters MVY 377. [T. R. 34.]

Mr. Donley further testified that he interviewed Mr. Nocita in the office of the South Gate Police Department around 9:40 that evening [T. R. 35]; that he questioned Mr. Nocita and referred to pieces of paper found in Mr. Nocita's pockets; that Mr. Nocita said, "The markers and the 'O'-sheets are not mine" [T. R. 37]; that Mr. Nocita further stated he had not worked since 1949 when he was employed as a bartender at the Atlantic

Club in Compton; that he owned a 1957 Ford Thunderbird in his wife's name, had only made the down payment on it by trading his 1954 Pontiac at Ben Barkleys and was financing both the Thunderbird and a 1957 Ford Sedan through a C.I.T. and P.F.C., respectively. Mr. Nocita said he held a master lease at a place called the "Smoke Shop" located at 6800 South Central Avenue; and Mr. Nocita admitted that he took small football bets from individuals. [T. R. 38.]

Carl Seltzer, testified that he was a Deputy Sheriff of Los Angeles County, assigned to the Vice Detail which investigates bookmaking; that he saw Roland Nocita on November 24, 1956, and was present at Mr. Nocita's arrest; that he took part in the search of Mr. Nocita and recovered numerous pieces of paper and an envelope containing United States currency [T. R. 51]; that he had extensive experience in the investigation and control of bookmaking and wagering and had previously testified as an expert witness regarding bookmakers, how they operate, and the paraphernalia they use [T. R. 52, 53]; that the papers found on the person of Roland Nocita on November 24, 1956, at the time of his arrest, were "O"-sheets and betting markers on which bets were recorded on horse races; that all the betting transactions indicated on the sheets of paper taken from Mr. Nocita were for bets on races run on November 23, 1956, and on November 22, 1956. The Court commented that according to the exhibits approximately 375 transactions appeared for each date. Therefore, there were better than 750 transactions in all. Mr. Seltzer also testified that he observed a Thunderbird with a metal plate license number MVY 377 parked on Central Avenue near 68th Street on the day of the arrest.

Mr. John J. Harris was then called as a witness for the Government. It was stipulated that he is an expert in the examination of question documents. It was further stipulated during the course of Mr. Harris' examination that the words "Thurs" and "Fri" which appeared on the betting markers and "O"-sheets were in the handwriting of Mr. Nocita. [T. R. 79-82.]

Mr. Arthur Katayama testified that he was a special agent with the Intelligence Division of the Treasury Department; that he checked with the California Motor Vehicle Department and found that the metal license plate MVY 377 was issued to the paper license 0573243; that he saw Mr. Nocita driving the 1957 Ford Thunderbird on November 20, 1956. During Mr. Katayama's testimony it was stipulated that Mr. Nocita's driver's license was found by Mr. Katayama in the glove compartment of the automobile. Mr. Katayama testified that two days after the seizure of the vehicle its speedometer had a reading of 1158 miles. [T. R. 83-107.]

Mr. Rudolph F. Vincelli testified that he owned a cocktail bar and that he was an agent for Mr. Nocita in the taking of wagers; that he took bets, turned them in to Mr. Nocita, and got a percentage; that sometime after the middle part of November, Mr. Nocita visited him in his bar, and that he at that time turned over to Mr. Nocita some money that Mr. Nocita had coming to him as a result of some of the bets that he, Mr. Vincelli, had taken for him; that he then accompanied Mr. Nocita to the parking lot in back of the rear entrance to the bar; and that Mr. Nocita told him it was a Ford Thunderbird automobile that he got into and he testified that it was a black car; that Mr. Nocita drove off in this black

Thunderbird automobile with the collections from the wagers that had been placed for him by Mr. Vincelli. [T. R. 92-105.]

Mr. Charles M. Dosmann testified that he was an Office Manager for Ben Barkley Motors, a Ford dealership; that on November 2, 1956, the subject automobile was purchased by Mrs. Nocita under the name of Anna Valetta Ewing; that paper license number 0573243 was issued to that car, and records indicated that the Thunderbird was serviced on November 23, 1956, at which time the mileage was 1120 miles. [T. R. 108.]

Mr. Arthur Higginson testified that he cashed his pay check with Mr. Nocita at the Smoke Shop on Central Avenue, and paid him some money that was owing to Mr. Nocita as a result of bets placed by Mr. Higginson. [T. R. 114.]

Mr. James B. Johnson testified that he was a Deputy Sheriff attached to the Los Angeles County Vice Detail which investigates bookmaking; that he apprehended Mr. Nocita on November 24, 1956; that he first saw Mr. Nocita come out of the Smoke Shop at 6717 Central and start to walk across the street where the black 1957 Ford Thunderbird automobile was parked; that Mr. Nocita hesitated and stepped back onto the sidewalk and then started to walk north on Central Avenue; that he eventually encountered Mr. Nocita in the alley of 68th Street and Central where he placed him under arrest; that when he and Mr. Nocita were walking across the street on Central Avenue, Mr. Nocita said "I want you to take care of that car, it's mine" [T. R. 126], and pointed toward the black and white Thunderbird; that he Mr. Johnson, replied "You mean the Thunderbird?" and

Mr. Nocita replied "Yes."; that he then said to Mr. Nocita "Why did you start to walk toward your car, and then take off?" and Mr. Nocita replied, "I came outside and saw you guys staked on the car." [T. R. 126.] Mr. Johnson further testified that the Thunderbird bore a metal license plate with the license number MVY 377.

Mr. Walter O. Barrett testified that during the month of November, 1956, he resided at 14651 South Lime Avenue in Compton, which is near the intersection of San Vicente and Lime Avenue; that he shared that apartment with Mr. Nocita, who paid half of the rent, but that he seldom stayed at that apartment; that he accepted football card bets for Mr. Nocita and that he left the money with the cards in the apartment and that Mr. Nocita had the key to the apartment. [T. R. 136-137.]

Gilbert E. Scholten testified that he was a Deputy Sheriff of Los Angeles County, assigned to the Vice Detail which investigated bookmaking activities; that he saw Mr. Nocita on November 20, 1956, driving a 1957 Ford Thunderbird automobile with paper license number 0572343; that he first saw him at the corner of Cole Place and Long Beach Boulevard in the City of South Gate, California; that he later saw him at the corner of San Vicente and Lime Avenues, in Compton, California, and that time he was in the same Thunderbird automobile and got out of the car in the vicinity of Lime Avenue and San Vicente in Compton.

The entire record in this case clearly supports the Court's Findings that Mr. Nocita used the 1957 Ford Thunderbird automobile in receiving wagers and as an active aid to and facilitation of his bookmaking business.

Here we have a man who is a bookmaker and actively engaging in the bookmaking business. The testimony adduced at the trial clearly shows the use of the subject Ford Thunderbird automobile by this bookmaker on November 20, 1956, and at a time somewhere after the middle of November, according to the testimony of Mr. Vincelli, all during a time when, according to the stipulations, he was actively engaging in bookmaking and wagering activities.

On November 20, 1956, the day he was trailed by agents and officers while he was in the 1957 Ford Thunderbird automobile, he was seen going to the vicinity of Lime Avenue and San Vicente in the City of Compton, California. On one occasion he was seen to stop the automobile and on another occasion he was seen to stop the automobile and get out. These facts are quite significant in the light of the testimony of Mr. Barrett who indicated that he played football cards, *i. e.*, made bets on football cards and took bets on football cards for Mr. Nocita and that he left the cards and the money in an apartment on Lime Avenue near the corner of San Vicente which he rented jointly with Mr. Roland Nocita. His testimony indicated that Mr. Nocita had a key to that apartment. From these facts one can infer that the wagers were left in that apartment for Mr. Nocita. This inference is quite reasonable and one which the trial judge must have drawn in order to make the findings as to the use of the vehicle by Mr. Nocita as an aid and facilitation to his bookmaking activities as well as its use in the receiving of the wagers; for to use the vehicle to go to a location to receive the football betting cards along with the money placed as bets would be a use of the vehicle in receiving wagers.

Next, on the date of November 24, 1956, the day that Mr. Nocita was arrested, it should be noted that the testimony of Deputy Sheriff Johnson clearly showed that Mr. Nocita was seen leaving the Smoke Shop on Central Avenue where he then started across the street toward the spot where the 1957 Ford Thunderbird automobile was parked. When apprehended and searched on this occasion betting markers and "O"-sheets representing several hundred wagering transactions on horse races for the previous two days were found in Mr. Nocita's possession and contained the abbreviation of the words Thursday and Friday on them in Mr. Nocita's own handwriting. Again the inference is present that Mr. Nocita, with the betting markers and "O"-sheets in his possession, left the Smoke Shop on Central Avenue and headed toward his Ford Thunderbird automobile, intending to use the same, further supporting the finding of the use of the vehicle by Mr. Nocita in his wagering activities.

Next we have the testimony of Mr. Vincelli who actually paid Mr. Nocita money coming to him as a result of wagers. Mr. Vincelli accompanied Mr. Nocita to the parking lot in back of his bar where Mr. Nocita got into the 1957 Ford Thunderbird automobile and drove off with the proceeds of the wagers. Appellant contends that there is not sufficient identification of the automobile on this occasion by Mr. Vincelli, however, in light of the entire testimony it becomes apparent that there was one, and only one, 1957 Ford Thunderbird automobile involved and used by Mr. Roland Nocita in his activities. All the testimony of the witnesses who saw Mr. Nocita driving in the black 1957 Ford Thunderbird automobile corroborates Mr. Vincelli's description of the car and bolsters the identification sufficient for the

Court to find that the automobile used on this occasion was the same automobile as was described in the other testimony concerning its use. While it is natural for officers of the law to note license numbers, it is not at all uncommon for private citizens, such as Mr. Vincelli, not to notice nor remember the license number of a particular vehicle.

Appellant contends that what happened at Mr. Vincelli's bar raises the sole question to be considered on this appeal; namely, whether or not the picking up of the money from the wagers is such a use of the vehicle so as to constitute it an instrumentality in the acceptance of wagers within the meaning of the Internal Revenue Code in order to subject the automobile to forfeiture for such activity. The appellee contends that this is a minor or sub-issue which can be decided in passing on whether or not the Court's findings of use of the vehicle in the wagering activity and as an aid and facilitation to Mr. Nocita in his bookmaking activities is justified by the evidence. What happened at Mr. Vincelli's bar was an additional piece of evidence which supports those findings made by the Court. It appears, that the Appellant has specified such a question because of some language in the Opinion written by the judge who heard the case. However, Appellee submits that the Opinion is not controlling and has no effect on this appeal. The Findings of Fact [T. R. 19] made after the Opinion was written and signed over the objections of the Appellant [T. R. 16] express the true opinion of the Court and are the facts that indicate that the trial court felt that the 1957 Ford Thunderbird in question was used in the wagering activity as alleged by the Government.

II.

The Judgment Is Not Contrary to Law Because the Use by Roland Nocita of the Seized Automobile to Receive Wagers and to Aid and Facilitate His Wagering Business, Comes Within the Meaning of Section 7302 of the Internal Revenue Code Which Subjects an Automobile to Forfeiture When It Is . . . “Intended for Use in Violating . . . the Internal Revenue Laws . . . or Which Has Been so Used” . . .

The type of uses that Mr. Nocita put the subject vehicle to have been held to be such use under Section 7302 of Title 18, as to justify seizure and forfeiture of the vehicle. In the case of *The United States v. One 1953 Oldsmobile Sedan*, 132 Fed. Supp. 14, the Court held that where the evidence established that the owner of the vehicle was engaged in the business of accepting wagers without having paid his special tax, and was using his automobile in that business, the Government was entitled to a decree of forfeiture. In that case the car was used to keep in contact with the persons who made the wagers and on the days following certain wagers the bookmaker would call upon his customers. If the bettor won the wager then the bookmaker would pay and if the bettor lost the wager then the bettor would make the pay-off to the bookmaker. In other words we have a situation where a bookmaker would use the vehicle to make his collections and in that case the Court found that such a use was within the meaning of Section 7302 of Title 26, United States Code, the same Section as is here involved.

It has further been held that Section 7302 of the Internal Revenue Code is a broad Section and should not be narrowly construed.

United States v. General Motors Acceptance Corporation (C. A. 5), 239 F. 2d 102.

In the *General Motors Acceptance* case Judge Reeves, in delivering the Opinion of the 5th Circuit, spoke as follows:

“ . . . It is urged that ‘Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law.’ *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 307 U. S. 219, 226, 59 S. Ct. 861, 865, 83 L. Ed. 1249. As noted in the same opinion, however, ‘The point to be sought is the intent of the law-making powers.’ In an earlier case, the Supreme Court had said:

‘We are not called upon to give a strained interpretation in order to avoid a forfeiture. Statutes to prevent fraud on the revenue are construed less narrowly, even though a forfeiture results, than penal statutes and other involving forfeitures.’ *United States v. Ryan*, 284 U. S. 167, 172, 52 S. Ct. 65, 67, 76 L. Ed. 224. See, also *Manufacturers Acceptance Corporation v. United States*, 6 Cir., 193 F. 2d 622.

It is said that we should construe §7302 with especial strictness since 18 U. S. C. A. §3617, providing for remission or mitigation of forfeitures, has reference only to the liquor tax laws. Available, however, are the compromise powers of the Secretary of the Treasury and the Attorney General, which formerly provided the procedure to afford relief to innocent owners in liquor tax cases.

United States v. One 1936 Model Ford V-8 De Luxe Coach, *supra*.

The gist of the offense is said to be the failure to pay the tax, and the truck was not used in failing to pay the tax. Section 7302 requires only that the vehicle be used or intended for use 'in violating the provisions of the internal revenue laws.' One of the acts going to constitute such violation was the engaging in the business of receiving wagers especially when, as here alleged, that was done 'with intent to defraud the United States of the wagering occupational tax.' A like contention has not prevailed in liquor tax cases. One Ford Tudor Automobile, etc. v. United States, *supra*; United States v. Ganey, *supra*; Jarrett v. United States, 4 Cir., 184 F. 2d 532; Shively v. United States, 4 Cir., 210 F. 2d 131.

Finally, it is insisted that, while §7302 of the 1954 Code broadens the scope of §3116 of the 1939 Code, it should be confined to cases involving a commodity upon which a tax is imposed, that the truck itself must in some way be guilty. See Goldsmith, Jr.-Grant Co. v. United States, 254 U. S. 505, 510, 511, 41 S. Ct. 189, 65 L. Ed. 376; United States v. One 1948 Plymouth Sedan, 3 Cir., 198 F. 2d 399; United States v. Lane Motor Co., 344 U. S. 630, 73 S. Ct. 459, 97 L. Ed. 622. In the last cited case, the Supreme Court held 'that a vehicle used solely for commuting to an illegal distillery is not used *in* violating the revenue laws.' 344 U. S. at page 631, 73 S. Ct. at page 460. The rule is different, however, where the vehicle is used not merely for the convenience of the operator in commuting, but also as an active aid in violating the revenue laws, even though not for the transportation of any commodities subject to seizure. United States v. One 1952 Lincoln Sedan,

5 Cir., 213 F. 2d 786; *One Ford Tudor Automobile, etc. v. United States*, supra; *United States v. Ganey*, supra; *Jarrett v. United States*, supra; *Shively v. United States*, supra. Cf. *United States v. Jones*, 5 Cir., 194 F. 2d 283.

The plain language of §7302 covers a truck used and intended for use in violating the wagering tax laws. The judgment is therefore reversed and the cause remanded for further proceedings consistent with this opinion.”

Since Section 7302 of the Internal Revenue Code is, in its plain reading, a very broad statute, such a use of a vehicle as was shown and found in this case falls clearly within its meaning and subjects the vehicle to forfeiture. The clear intention of Congress in the passage of such a broad Section appears to be to double and increase the penalties involved in violations of the Internal Revenue Act so as to discourage persons who engage in such violations. Because many of us are adverse to seeing multiple penalties piled up, we overlook the fact that it is a recognized procedure to discourage certain particular activities. It is not the duty of Courts to change this procedure by way of judicial legislation but is a policy matter solely within the discretion of Congress.

In this case we have clear Findings of Fact by the District Court as to the use of the 1957 Ford Thunderbird automobile by Mr. Nocita in receiving wagers and as an active aid and facilitation to him in his bookmaking business. It is a well recognized principle that a trial judge's Findings of Fact are never to be lightly disturbed by a reviewing Court. Generally, Appellate Courts will not overturn Findings of Fact of the trial judge, since he has had the opportunity of hearing the witness. The

trial judge's Findings must be given great weight and should be binding, unless clearly based on an obvious error of law or a serious mistake or misconception of a fact.

Standard Oil Co. v. Shipowners' & Merchants' Tugboat Co., 17 F. 2d 366 (C. A. 9);

National Surety Co. v. Globe Grain & Milling Co., 256 Fed. 601 (C. A. 9);

Woodbury, et al. v. City of Shauneetown, 74 Fed. 205 (C. A. 7);

Fidelity & Casualty Co. of New York v. Phelps, et ux., 64 F. 2d 233 (C. A. 4).

There is no contention made that violations of Sections 4411 and 4412 are not violations of the internal revenue laws and since these Sections are part of the Internal Revenue Code, as passed by Congress, any violations of them would invoke the operation of Section 7302 of the Internal Revenue Code. Mr. Nocita admits the violations of Sections 4411 and 4412 and the admissions are corroborated by the judgment of conviction for such violations which was introduced in evidence in the trial. [T. R. 131-132.] Therefore, appellee contends that the use by Mr. Nocita of the 1957 Thunderbird automobile in his wagering activities falls within Section 7302 of the Internal Revenue Code and subjects that vehicle to seizure, condemnation and forfeiture to the United States.

One of the leading cases involving a vehicle seized for violating Section 7302 of Title 26, United States Code, was the case of *United States v. Lane Motor Company*, 344 U. S. 630. In that case the United States Supreme Court held that "a vehicle used *solely* for commuting to an illegal distillery is not used in violating the internal

revenue laws,” (at p. 631). The *Lane Motor Company* case apparently implies that where the vehicle is used for *something more* than merely commuting, *it can be* in violation of the internal revenue laws. It follows, therefore, that if the vehicle is used for *something more* than commuting and is violating some internal revenue laws it is subject to forfeiture pursuant to Section 7302, Title 26, United States Code. (Emphasis added.)

A review of the cases aids us in determining what has been held to be that *something more* than merely commuting. In the case of *United States v. General Motors Acceptance Corporation*, cited *supra*, in a situation involving the use of a truck in connection with the business of receiving wagers in violation of law, it was held that the truck in question was not used “merely for the convenience of the operator in commuting, but also as an active aid in violating the revenue laws, even though not for the transportation of any commodities subject to seizure” and, therefore, the Court held the vehicle properly subject to forfeiture pursuant to Section 7302, Title 26, United States Code. The Court in the *General Motors Acceptance Corporation* case cited, *inter alia*, the case of *United States v. Lane Motor Company*, *supra*, and also cited the case of *United States v. One 1952 Lincoln*, 213 F. 2d 786, in which latter case the Court pointed out that Section 7302, “does not place any express limitation on the manner in which property intended for use in violation of revenue laws is employed, nor does it require in terms that the liquor be transported in the automobile.” It was also pointed out by the Court in the *1952 Lincoln* case that the case is controlled by the *general* provisions for forfeiture contained in Section 7302, of the Code, and *not* by the more limited provisions of forfeiture con-

tained in the other Sections of the Code. (Emphasis added.)

The *Lane Motor Company* case may be distinguished from the case at bar by comparing the use of an automobile, on the one hand, to carrying its owner from his home to his office and, on the other hand, its use during the day to carry the owner from place to place in connection with his business, such as buying or selling.

United States v. One 1941 Buick, 85 Fed. Supp. 402;

United States v. One Chevrolet, etc., 91 Fed. Supp. 272.

In the case at bar we have the use of the 1957 Ford Thunderbird automobile by Mr. Nocita in *something more* than merely going to and from a place of business. We have it used by Mr. Nocita as an active aid in facilitation to his business, *e.g.*, when it was used by Mr. Nocita to go to Mr. Vincelli's bar to make his collections on certain wagers. Therefore, the Government contends that we have *something more* than merely commuting involved in the instant case and the law of the *Lane Motor Company* case would not be applicable. Appellee contends that the law has finally developed to a point where once the user of the vehicle embarks upon his business venture, using his vehicle to facilitate his operations, the use of the vehicle becomes *something more than merely commuting*; and when this use is in violation of the internal revenue laws the vehicle is subject to forfeiture pursuant to Section 7302, Title 26, United States Code. (Emphasis added.) No longer is it necessary to discover, within the vehicle itself, illicit material such as contraband, narcotics, lottery tickets, liquor, etc.; nor do we need an illicit sale of any

contraband article in the vehicle, we now merely need to have the automobile used to facilitate the transaction of any business operation which is in violation of the internal revenue laws. If this be the case, such as the Government contends it is here, then the vehicle itself is used in violation of the internal revenue laws and is subject to forfeiture pursuant to Section 7302, Title 26, United States Code.

On the basis of the foregoing the appellee contends that the District Court's judgment decreeing the condemnation and forfeiture of the 1957 Ford Thunderbird automobile, Motor No. D7FH116357, its tools and appurtenances, for its use by Roland Nocita in receiving wagers and as an active aid to and facilitation of his wagering activities is not contrary to law.

Conclusion.

It is respectfully submitted that the judgment of the United States District Court in which the 1957 Ford Thunderbird automobile, its tools and appurtenances, were condemned and forfeited to, appellee, the United States of America, should be affirmed.

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